

DELEGATE MACDONALD: Is that true regardless of varying interpretations of the Court in the future?

DELEGATE J. CLARK (presiding): Delegate Kiefer.

DELEGATE KIEFER: We based this language—I will try again to make it clear, and I do not want to be cute with you. We based the language that we have stated in section 2 on what our Court of Appeals has said in the Horace Mann case and what the Supreme Court said in the Everson case. This is the only basis on which we can tell you why we used the language of the First Amendment.

Now, in the Everson case—and I will take again a moment to read you that famous language which I think establishes this concept:

“The establishment of religion clause of the First Amendment means at least this: Neither a state nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the federal government can openly or secretly participate in the affairs of any religious organizations or groups, and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect a wall of separation between church and state.”

Now, our court applied this language in construing four separate grants by the legislature to four separate institutions of higher learning and held in the case of three of them that this was an aid of sectarian schools and therefore unconstitutional.

Now, the reason we adopted the First Amendment language was that the Court went on in this very case to say that under the Maryland Declaration of Rights it would not be unconstitutional and had been done for years and had been the practice over the last 100 or 200 years.

I hope that I have made clear to you that our language is based upon the present status of the law as clearly established by the Supreme Court and by our own Court of Appeals, and I cannot be any more definite.

DELEGATE J. CLARK (presiding): Delegate Macdonald, were you finished?

DELEGATE MACDONALD: I understand that this represents the intent of your Committee, is that correct?

DELEGATE J. CLARK (presiding): Delegate Kiefer.

DELEGATE KIEFER: That is correct, and is so stated, I think, in our memorandum.

DELEGATE J. CLARK (presiding): The Chair recognizes Delegate Scanlan.

DELEGATE SCANLAN: The question Delegate Macdonald was trying to put to you was the following, Mr. Kiefer, and I will put it.

Suppose Maryland adopts the proposal as you have it in the First Amendment almost in hoc verba with the First Amendment, and a few years hence the Supreme Court of the United States holds that it is not a violation of the First Amendment for a State to make matching contributions to institutions of higher education which may have religious affiliations, when the matching grant is made in connection with the construction of laboratories, classrooms, and other non-religious facilities.

Assume the Supreme Court so holds in the future. Is it the intention of your Committee to permit that interpretation of the Supreme Court to be the interpretation which would control the Maryland courts for purposes of applying their own little First Amendment, or would it be the intention of your Committee to freeze the decision, the result reached in the Horace Mann case in the constitution of the State, assuming the adoption of a little First Amendment?

Do I make myself clear?

DELEGATE J. CLARK (presiding): Delegate Kiefer.

DELEGATE KIEFER: Well, you make yourself clear.

We had testimony on this from Mr. William Marbury, who was one of the counsel in one of these cases, and, of course, I think you know something about these cases, too.